Supreme Court, U.S.
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In The

Supreme Court of the United States

ALBERT KRANTZ and
MIRIAM KRANTZ,

Petitioners,

v.

ARKANSAS DEPARTMENT
OF HUMAN SERVICES,

Respondent.

On Petition For A Writ Of Certiorari To The Arkansas Court Of Appeals

PETITION FOR WRIT OF CERTIORARI

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October 22, 2010

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RULE 29.6 STATEMENT

There are no corporations party to this case, but the Tony Alamo Christian Ministries, Fouke, Arkansas, is discussed throughout the opinion of the trial court and the Arkansas Court of Appeals. The petitioners' relation to Tony Alamo Christian Ministries is an issue in this case.

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PETITION FOR WRIT OF CERTIORARI

Petitioners, Albert and Miriam Krantz, respectfully petition for a writ of certiorari to the Arkansas Court of Appeals in this case.

OPINIONS BELOW

The opinion of the Arkansas Court of Appeals (App. 1-2) is reported at 2010 Ark. App. 316, 2010 WL 1487246. It incorporates by reference *Thorne v. Arkansas Dep't of Human Servs.*, 2010 Ark. App. 317 (April 14, 2010), which was modified on rehearing 2010 Ark. App. 443, 2010 WL 1988182 (May 19, 2010). (App. 3-23) The Arkansas Court of Appeals denied rehearing May 19, 2010 (App. 35), and the Arkansas Supreme Court denied a petition for review June 24, 2010. (App. 37)

The decision of the circuit court is unreported. (App. 24-34)

JURISDICTION

The Arkansas Court of Appeals decision was entered April 14, 2010. Timely petitions for rehearing and for review were denied May 19, 2010 and June 24, 2010, respectively. (App. 35, 37). On September 7, 2010, Justice Alito extended the time for this petition for writ of certiorari to October 22, 2010.

Jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS INVOLVED

The First Amendment to the U.S. Constitution provides:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; . . . .

The Fourteenth Amendment to the U.S. Constitution, § 1:

> . . . nor shall any state deprive any person of life, liberty, or property, without due process of law; . . .

STATEMENT

1. This case raises an important question of free exercise of religion in the context of a child dependency and neglect case. The petitioners are church missionaries ordered by the juvenile court to disassociate from the Tony Alamo Christian Ministries to be reunified with their children first put into foster care by emergency order. If they fail to comply, their parental rights can be terminated, and

their children put up for adoption.[1] They also claim the utter lack of evidence as to them under the "cut and paste" juvenile court order prepared by the state's attorney and signed by the juvenile judge violates their due process rights.

2. In September 2008, the respondent Arkansas Department of Human Services obtained juvenile court orders to take control of all 124 children believed to be residing at the Tony Alamo Christian Ministries, Fouke, Arkansas. While not many were initially found there, others were later picked up and detained. In the process, petitioners' six children were taken from them.

Despite the state requirement of a closed hearing,[2] there was a combined hearing in January 2009 involving the common fact issues involving nine families. Individual hearings followed. There were hearings finding the children dependent and neglected based on findings of fact and conclusions of law involving life and conditions at the Tony Alamo Christian Ministries.

The ultimate goal of any dependency and neglect case is reunification of the family, as it is here. (Order App. 29, ¶ 6) If the court finds that fails, however, the

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[1] *See* note 3, *infra*.

[2] Ark. Code Ann. § 9-27-325(i)(1) (Supp. 2010).

petitioners' family rights can be terminated and the children put up for adoption.[3]

From those cases there are now eleven opinions from the Arkansas Court of Appeals.[4]

This petition involves only one family, parents separated from their six children, without any evidence whatsoever against them, requiring them to disassociate from the Tony Alamo Christian Ministries to be reunited with their children in violation of their religious faith. The petitioners are given the choice of sacrificing their religious beliefs to satisfy the respondent and the juvenile court that their children are not dependent and neglected.

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[3] Ark. Code Ann. § 9-9-220(c)(2) (Supp. 2010).

[4] Besides this case are: *Thorne v. Ark. Dept. of Human Services,* 2010 Ark. App. 317 (April 14, 2010), substituted opinion on denial of rehearing 2010 Ark. App. 443, 2010 WL 1988182 (May 19, 2010); *Myers v. Ark. Dept. of Human Services,* 2010 Ark. App. 326 (April 14, 2010), substituted opinion on denial of rehearing 2010 Ark. App. 444, 2010 WL 1997411 (May 19, 2010); *Parrish v. Ark. Dept. of Human Services,* 2010 Ark. App. 327, 2010 WL 1487224 (April 14, 2010); *Reid v. Ark. Dept. of Human Services,* 2010 Ark. App. 156, 2010 WL 546436 (February 17, 2010); *Broderick v. Ark. Dept. of Human Services,* 2010 Ark. App. 168, 2010 WL 546494 (February 17, 2010); *Seago v. Ark. Dept. of Human Services,* 2010 Ark. App. 169, 2010 WL 546410 (February 17, 2010); *Ondrisek v. Ark. Dept. of Human Services*, 2010 Ark. App. 164, 2010 WL 546367 (February 17, 2010); *Seago v. Ark. Dept. of Human Services,* 2009 Ark. App. 767, 2009 WL 3852785 (November 18, 2009); *Broderick v. Ark. Dept of Human Services,* 2009 Ark. App. 771, 2009 WL 3853149 (November 18, 2009); *Reid v. Ark. Dept. of Human Services,* 2009 Ark. App. 784, 2009 WL 3855700 (November 18, 2009).

Under the clearly erroneous standard of appellate review,[5] which in Arkansas dependency and neglect cases also involves de novo review of the application of the facts to the law,[6] whatever one would say about the evidence to support the conclusions of the juvenile court in the other cases, the record as to the petitioners is utterly devoid of proof that petitioners' children are dependent and neglected. There are no "two permissible views of the evidence"[7] as to them, and that is their due process claim. Petitioners submit that they lost in the juvenile court and on appeal solely because of guilt by association and who they choose to pray and associate with. That is their free exercise claim. The potential termination of their parental rights are at issue.

3. Petitioners submit they and their children were swept up in the state's hysteria against the Tony Alamo Christian Ministries and sexual abuse allegations and allegations of underage marriages against Alamo and some acting with him[8] but that do not

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[5] *Anderson v. Bessemer City*, 470 U.S. 564, 573-74 (1985).

[6] *Wade v. Ark. Dept. of Human Services*, 337 Ark. 353, 356, 990 S.W.2d 509, 511 (1999).

[7] *See Anderson*, 470 U.S. at 574.

[8] Alamo was convicted of Mann Act violations involving five minor girls at the Tony Alamo Christian Ministries, *United States v. Hoffman aka Alamo*, 4:08CR40020-001 HFB (W.D. Ark.), which is on appeal to the U.S. Court of Appeals for the Eighth Circuit. *United States v. Hoffman aka Alamo*, 09-3651 (8th Cir.), submitted September 21, 2010. Alamo was sentenced to 2100 months. Alamo has been in federal custody since September 2008.

involve them. Moreover, the record is devoid of any evidence against them that justifies taking their children from them and putting their children into foster care. Essentially, at the juvenile court's direction, the state's attorney drafted the orders in all the cases, they are identical but for the names,[9] and the juvenile judge signed off on them (App. 24-34), making no differentiation for different evidence as to the individual families.

4. Petitioners raised their free exercise and due process challenges in the juvenile court which were rejected on appeal, relying on the result in another case. (App. 18-23)

In their petition for rehearing, they reiterated that the record was devoid of any evidence against them, strict scrutiny review had to be applied, and the juvenile court order and its affirmance were thus essentially aggravated due process violations by the expedience of "cut and paste" that failed to account for the lack of evidence against them. Rehearing was summarily denied.[10] (App. 35) The Arkansas Supreme Court denied a petition for review. (App. 37)

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[9] In this case, the order refers to petitioners' "other children" when there are none.

[10] In *Myers* and *Thorne*, the court of appeals substituted opinions mention that petitions for rehearing were filed in those cases but omits mention of the petition for rehearing here. (App. 3)

REASONS FOR GRANTING THE PETITION

I. THE DECISION OF THE ARKANSAS COURT OF APPEALS CONFLICTS WITH THIS COURT'S DECISIONS APPLYING STRICT SCRUTINY REVIEW TO FREE EXERCISE OF RELIGION CLAIMS.

A. Free exercise of religion claims are subject to strict scrutiny. *Church of Lukumi Babalu Aye, Inc. v. Hialeah,* 508 U.S. 520, 532-33, 546 (1993); *County of Allegheny v. American Civil Liberties Union Greater Pittsburgh Chapter,* 492 U.S. 573, 608-09 (1989); *Thomas v. Review Bd. of Indiana Employment Sec. Division,* 450 U.S. 707, 718 (1981); *Wisconsin v. Yoder,* 406 U.S. 205, 215 (1972).[11]

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[11] *See Hodgson v. Minnesota,* 497 U.S. 417, 447-48 (1990), quoted in Point II, infra, the due process argument, immediately preceding the quote below:

> "The statist notion that governmental power should supersede parental authority in all cases because some parents abuse and neglect children is repugnant to American tradition." *Parham,* 442 U.S., at 603. We have long held that there exists a "private realm of family life which the state cannot enter." *Prince v. Massachusetts,* 321 U.S., at 166. Thus, when the government intrudes on choices concerning the arrangement of the household, this Court has carefully examined the "governmental interests advanced and the extent to which they are served by the challenged regulation." *Moore v. East Cleveland,* 431 U.S. 494, 499 (1977) (plurality opinion); *id.,* at 507, 510-511 (BRENNAN, J., concurring); *see also Meyer v. Nebraska,* 262 U.S. 390, 399-400 (1923).

This free exercise claim runs headlong into the power of the State of Arkansas; not to just put the children into foster care pending final resolution, but it risks outright destruction of this family unit. Petitioners' children are at risk of being put up for adoption if petitioners do not satisfy the juvenile court that they have sufficiently disassociated from their church.

In this case, petitioners submit the Arkansas courts erroneously applied a balancing of interests of the children, parents, and state rather than strict scrutiny to petitioners' free exercise claim as required by this Court's cases. The interest of the state in protecting the safety of children at the Tony Alamo Christian Ministry is undoubtedly valid, *if* those children are actually at risk. But, balancing the interests is not the approach that the First Amendment requires. Applying the strict scrutiny standard of review to petitioners' case, with the juvenile court looking for the least restrictive means to achieve the desired result, petitioners should have prevailed and their children returned to them.

B. In *Thorne,* 2010 Ark. App. 443, at 16-18 (App. 21-23), controlling here by reference (App. 2), the court of appeals held:

> A parent's right of conscience in religious matters, however, sometimes collides with state laws of general application promulgated for the protection of children and other citizens. There are familiar examples. *Wisconsin v. Yoder*, 406 U.S. 205 (1972). . . .

> These fact-specific cases strive for a delicate balance, one that respects all the important interests involved: parents' rights of conscience and of child-rearing and the state's interest as *parens patriae* in protecting children.
>
> Arkansas law recognizes this delicate balance. . . .
>
> Here, as the circuit court implicitly concluded, the State's interest in preventing potential harm to these children outweighed Thorne's conscientious choice to live on ministry property, work for the ministry, and depend on the ministry for his family's every need. We see no constitutional infirmity in the circuit court's disposition order on this record.

This is but a balancing of interests; it is not strict scrutiny required by the free exercise clause.

C. The state courts' balancing of interests conflicts with settled case law from this Court.

For example, *Thomas*, 450 U.S. at 718:

> The state may justify an inroad on religious liberty by showing that it is the least restrictive means of achieving some compelling state interest. However, it is still true that "[t]he essence of all that has been said and written on the subject is that only those interests of the highest order . . . can overbalance legitimate claims to the free exercise

of religion." *Wisconsin v. Yoder, supra,* 406 U.S., at 215.

In *Church of Lukumi Babalu Aye,* 508 U.S. at 546, the Court said:

> A law burdening religious practice that is not neutral or not of general application must undergo the most rigorous of scrutiny. To satisfy the commands of the First Amendment, a law restrictive of religious practice must advance "'interests of the highest order'" and must be narrowly tailored in pursuit of those interests. *McDaniel v. Paty,* 435 U.S. [618], at 628 [(1978)], quoting *Wisconsin v. Yoder,* 406 U.S. 205, 215 (1972). The compelling interest standard that we apply once a law fails to meet the *Smith* requirements is not "water[ed] . . . down" but "really means what it says." *Employment Div., Dept. of Human Resources of Ore. v. Smith,* 494 U.S., at 888. A law that targets religious conduct for distinctive treatment or advances legitimate governmental interests only against conduct with a religious motivation will survive strict scrutiny only in rare cases. (bracketed material added)

D. The court of appeals erred in not applying the strict scrutiny standard of review in this dependency and neglect and potential forced adoption case involving free exercise of religion, considering petitioners' repeated assertions there is insufficient evidence as to them.

The interests asserted by the state are no doubt valid, but do they even apply here? By applying a balancing of interests, the court of appeals was erroneously and unconstitutionally diverted from deciding the merits of petitioners' individual appeals that their children were not dependent and neglected.

It was conceded by all that the petitioners were good parents and their children were not seriously at risk, even if one credits all the testimony and compared to other parents of children in this series of cases. Essentially, the petitioners were lumped in with all others at the Tony Alamo Christian Ministries. It was purely guilt by association, without any individual assessment of the claims under the free exercise clause. The First Amendment requires more.

Petitioners are church missionaries, and they live on the church property. They have devoted their adult lives to the evangelical mission of the Tony Alamo Christian Ministries. They work and live there, and their six children were born there. Serving God in this way is their life; it is how they choose to live their lives. The juvenile court told them to stop without even considering any alternatives.

While there may be some evidence supporting a dependency and neglect finding as to other parents and children at the church property, including child abuse and some sexual abuse, absolutely none of it involved petitioners nor their children. Nor was there any evidence that the petitioners' children were remotely aware of the other allegations except for one

incident of paddling another child that left the petitioners' child unimpressed.[12]

There is no evidence whatsoever that petitioners or the Tony Alamo Christian Ministries neglected the petitioners' children. The petitioners were admittedly "wonderful people" who were sincere in their religious beliefs that they should serve the Tony Alamo Christian Ministries as they chose to do by being missionaries for the church and spreading the word of God.

In fact, the state called a woman, who left the church *eight* years earlier, who testified to parts of the church doctrine, over a First Amendment objection, and that she disagreed with the religious perspectives of the Tony Alamo Christian Ministries in detail. One example:

> My opinion is that they [the children] are in harm[']s way because the parents do not see. They continually are taught the perspective of Tony [Alamo] and his perspectives are not right as I have already talked about. And as long as they are there, I mean there are some great people like the Krantzes are wonderful people. The Myers, Bethany is a wonderful mother. I mean some great people, but under the influence of Tony I fear for those children while they are in that environment. (Tr. 869 (bracketed material added))

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[12] Reasonable corporal punishment is permitted in Arkansas schools. *See, e.g.,* Ark. Code Ann. § 6-18-505 (Repl. 2009).

The feared "perspectives" of Tony Alamo and the Tony Alamo Christian Ministries are squarely rooted in nothing but the Bible. They, like billions of other persons, consider the Bible the absolute word of God. Petitioners believe and live this, and their children do too. That is a belief system that is absolutely constitutionally protected and none of the state's business. The court of appeals here recognized this as a part of the "sincerity" of the petitioners' beliefs: "As another court stated the legal principle in another case involving this ministry, '[r]eligious and political beliefs, no matter how bizarre and nonconforming, are personal matters, and the courts are not instruments of orthodoxy charged with the responsibility of keeping citizens on the ideological straight and narrow.' *Miller v. Tony and Susan Alamo Found.*, 748 F. Supp. 695, 698 (W.D. Ark. 1990)." *Thorne, supra,* at 16. (App. 20) The court, however, did not apply strict scrutiny.

Based on that belief system, and guilt by association, the petitioners had their children removed from them by order of the juvenile court. Worse yet, no alternative was even considered by any court.[13] As far as the Arkansas courts were concerned, their being in the Tony Alamo Christian Ministries was reason

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[13] If the state courts are so concerned about Alamo's influence over the church, they never mention that he is in a maximum security prison for 2,100 months, 1,135 miles away in Tucson, Arizona. He was in custody since shortly after the raid, before the first dependency and neglect cases were heard, or even filed.

enough to take their children away from them. Petitioners submit that a more sensitive First Amendment analysis was required.

> Procedure by presumption is always cheaper and easier than individualized determination. But when, as here, the procedure forecloses the determinative issues of competence and care, when it explicitly disdains present realities in deference to past formalities, it needlessly risks running roughshod over the important interests of both parent and child. It therefore cannot stand.

Stanley v. Illinois, 405 U.S. 645, 656-57 (1972).

Petitioners were entitled to have their claim tested under strict scrutiny and not just a balancing of interests. It violates the First Amendment to penalize or tamper whatsoever with that belief system and remove petitioners' children from them, making them potentially subject to adoption, without even attempting to apply strict scrutiny review.

II. THE DECISION OF THE ARKANSAS COURT OF APPEALS CONFLICTS WITH THIS COURT'S DECISIONS APPLYING THE DUE PROCESS CLAUSE TO PROTECTION AND RECOGNITION OF FAMILY INTEGRITY.

A. The petitioners' family was taken apart by the juvenile court order affirmed by the Arkansas Court of Appeals, and there is no competent evidence

to support it. That violates due process of law under this Court's cases.

Intertwined with the free exercise claim is the fact that the decision of the Arkansas courts removing petitioners' children from them because of their association with the Tony Alamo Christian Ministries without sufficient evidence violates their due process rights to maintain family integrity. It is a given that due process protects the integrity of the family unit from state action. *See Hodgson v. Minnesota,* 497 U.S. 417, 447 (1990), the abortion notification case:

> A natural parent who has demonstrated sufficient commitment to his or her children is thereafter entitled to raise the children free from undue state interference. As Justice White explained in his opinion for the Court in *Stanley v. Illinois,* 405 U.S. 645 (1972):
>
> > "The Court has frequently emphasized the importance of the family. The rights to conceive and to raise one's children have been deemed 'essential,' *Meyer v. Nebraska,* 262 U.S. 390, 399 (1923), 'basic civil rights of man,' *Skinner v. Oklahoma,* 316 U.S. 535, 541 (1942), and '[r]ights far more precious . . . than property rights,' *May v. Anderson,* 345 U.S. 528, 533 (1953). 'It is cardinal with us that the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state

> can neither supply nor hinder.' *Prince v. Massachusetts,* 321 U.S. 158, 166 (1944). The integrity of the family unit has found protection in the Due Process Clause of the Fourteenth Amendment, *Meyer v. Nebraska, supra* at 399, the Equal Protection Clause of the Fourteenth Amendment, *Skinner v. Oklahoma, supra* at 541, and the Ninth Amendment, *Griswold v. Connecticut,* 381 U.S. 479, 496 (1965) (Goldberg, J., concurring)." *Id.*, at 651.

Similarly, in *Lehr v. Robertson,* 463 U.S. 248, 258 (1983),

> the Court has found that the relationship of love and duty in a recognized family unit is an interest in liberty entitled to constitutional protection. See also *Moore v. City of East Cleveland,* 431 U.S. 494 (1977) (plurality opinion). "[S]tate intervention to terminate [such a] relationship . . . must be accomplished by procedures meeting the requisites of the Due Process Clause." *Santosky v. Kramer,* 455 U.S. 745, 752 (1982).

B. What is the quality of evidence required under the due process clause? In a case like this, at what point do the free exercise clause of the First Amendment and the due process clause of the Fourteenth Amendment merge? Or do they? Should they?

Both are sufficient for petitioners to prevail.

Moreover, when the record is so lacking in evidence against petitioners supporting the conclusion adopted by the state court it is not just clearly erroneous under *Anderson v. Bessemer City, supra,* it becomes a due process violation itself. *Thompson v. City of Louisville,* 362 U.S. 199 (1960); *Vachon v. New Hampshire,* 414 U.S. 478, 480 (1974).

C. As stated above, petitioners were swept up in the animus against Tony Alamo that they had nothing to do with or knew about. There is no legally sufficient evidence supporting the order that their children had to be removed from them until they bowed to the juvenile court demand that they, as missionaries for the Lord, disassociate from the Tony Alamo Christian Ministries and their lifes' work. The state submitted the same substantive order in all the cases, just changing the names, in this case referring to "other children in their family" (App. 26) when there are none. This left no room for individualized justice.

On the state of this record, petitioners received no due process in the state's rending of this family.

CONCLUSION

The petition for writ of certiorari should be granted.

Respectfully submitted,

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2010 Ark. App. 316

ARKANSAS COURT OF APPEALS
DIVISION I
No. CA09-579

ALBERT KRANTZ and MIRIAM KRANTZ
APPELLANTS

v.

ARKANSAS DEPARTMENT OF HUMAN SERVICES
APPELLEE

Opinion Delivered April 14, 2010

Appeal from the Miller
County Circuit Court
[NO. JV-2008-323-1]

Honorable Joe E. Griffin, Judge

AFFIRMED

RITA W. GRUBER, Judge

Albert and Miriam Krantz appeal from an order adjudicating their children, L.K., A.K.1, A.K.2, S.K., C.K., and R.K., dependent-neglected after DHS took them into custody from the Tony Alamo Christian Ministries compound in Fouke, Arkansas, in November 2008. In the same proceeding, the circuit court also adjudicated the children of Don Thorne, Bethany Myers, and Carlos and Sophia Parrish dependent-neglected. All of the parents make the same arguments on appeal. They challenge the sufficiency of the evidence to support the dependency-neglect findings, and contend that the trial court violated their rights

to the free exercise of their religion in ordering them to obtain and maintain housing and employment separate and apart from the ministry.

In a separate opinion, we affirmed the adjudication order involving the children of Don Thorne. *Thorne v. Ark. Dep't of Human Servs.*, 2010 Ark. App. 317, ___ S.W.3d ___. We [*2] affirm the adjudication order involving the Krantzes' children for the same reasons expressed in the *Thorne* appeal.

Affirmed.

MARSHALL and BAKER, JJ., agree.

2010 Ark. App. 443

ARKANSAS COURT OF APPEALS
DIVISION I
No. CA09-583

DON THORNE
APPELLANT

v.

ARKANSAS DEPARTMENT OF HUMAN SERVICES
APPELLEE

Opinion Delivered May 19, 2010

Appeal from the Miller
County Circuit Court
[NO. JV-2008-323-1]

Honorable Joe E. Griffin, Judge

AFFIRMED

RITA W. GRUBER, Judge

This court handed down an opinion on April 14, 2010, affirming the trial court's order adjudicating appellant Don Thorne's children dependent-neglected. The same day, we issued an opinion affirming the trial court's order adjudicating the children of Bethany Myers dependent-neglected, in part for the same reasons expressed in our decision affirming the order in Thorne's case. *Myers v. Arkansas Dep't of Human Servs.*, [*2] 2010 Ark.App. 326. Thorne and Myers filed petitions for rehearing alleging that this court's decisions contained mistakes of law and fact. In response to Myers's petition, we issued a substituted opinion correcting a nonmaterial mistake of fact

and denying her petition. *Myers v. Arkansas Dep't of Human Servs.*, 2010 Ark.App. ___. We correct the same error in this substituted opinion and deny Thorne's petition.

This is one of four appeals decided today that involve children who were removed from the Tony Alamo Christian Ministries compound in Fouke, Arkansas, in November 2008. The circuit court heard the cases together in one adjudication hearing. Appellant, Don Thorne, is the father of three children placed in DHS's custody. He challenges the circuit court's order adjudicating them dependent-neglected. We affirm the court's order.

In September 2008, DHS took emergency custody of six minor females who lived in Tony Alamo's residence at the Fouke compound. DHS presented evidence that their parents were aware of beatings administered to the ministry's children by adults; that some of the parents and other children witnessed the beatings; that the parents condoned the marriage of underage females to adult males and placed their daughters in the residence of Tony Alamo without parental supervision; that Alamo sexually abused one of the girls (M.B.1) and spent time in his bedroom with others; that the parents neglected to provide the children with proper medical care and education; and that they condoned extreme disciplinary measures for young children, such as fasting. On November 18, 2009, we affirmed the circuit courts orders adjudicating the girls dependent-neglected. See *Broderick v. Ark. Dep't of Human Servs.*, 2009 Ark.App. 771, ___

S.W.3d ___; *Seago v. Ark. Dep't of Human Servs.*, 2009 Ark.App. 767, ___ S.W.3d ___; *Reid v. Ark. Dep't of Human Servs.*, 2009 Ark.App. 784. [*3]

The evidence taken at the girls' adjudication hearings led DHS to seek emergency custody of many more children in Fouke. The circuit court held an adjudication hearing that began on January 12, 2009, for the Reid, Seago, Broderick, Ondrisek, Krantz, Thorne, Myers, Parrish, and Avila children. Many of the children sought by DHS, including some of the Thorne and Myers children, were hidden by their parents or other ministry adults. The court granted DHS's motion for directed verdict as to the Reid, Seago, Broderick, and Ondrisek children because their siblings had already been adjudicated dependent-neglected. On February 17, 2010, we affirmed appeals from those adjudications because the appellants had raised their arguments for the first time on appeal. Today we affirm the orders adjudicating the children of the Thorne, Krantz, Myers, and Parrish families dependent neglected.

Don Thorne is the father of a daughter, A.T.1, aged fourteen, and two sons, A.T.2, born in 1995, and A.T.3, aged twelve. From an earlier marriage, he is also the father of one of the other appellants, Sophia Parrish, aged twenty-three. He has been a member of the ministry since 1974, when he was nineteen. There was testimony that A.T.1 lived in Tony Alamo's residence. Thorne works for the ministry and lives on its property in Fouke. At the time of the hearing, his wife, Luisa Cordero-Thorne, was in hiding with A.T.1

and A.T.3 with Thorne's help. Although Thorne claimed to not know where they were, the circuit court held him in contempt until his wife brought the children back. [*4]

The witnesses at the adjudication hearing were G.P.1 (the son of Carlos and Sophia Parish); Jessica Cooper (a former member of the ministry); M.B.1 (a former member); Nicholas Broderick (a former member); S.B. (a former member); H.D. (a former member); Don Thorne; Sophia Parrish; Carlos Parrish; Bert Krantz; Debra Ondrisek; Miriam Krantz; Richard Ondrisek; Cindy Allen (a DHS supervisor); Brian Broderick; Alphonso Reid; Bethany Myers; Rebecca Avila; and Jose Avila. Nicholas, M.B.1, and S.B. are siblings of M.B.2, who was a subject of this hearing. Jessica Cooper is their aunt. Like Thorne, the Krantzes, the Parrishes, Bethany Myers, the Ondriseks, the Avilas, Brian Broderick, and Alphonso Reid are parents of some of the children with whom this hearing was concerned.

Jessica Cooper testified that she was born in the ministry in 1972 and married her husband when she was sixteen and he was twenty-seven. She said that the ministry is not a safe environment in which to rear children and testified at length about its communal lifestyle; its secrecy; the reporting system that encourages members to inform on each others' transgressions; the imposition of fasting as punishment; and the restrictions on members' contact with the outside world. She said that she left because she wanted her children to go to college and that it was

not customary for girls to finish high school because they usually got married. She gave several examples of girls no older than sixteen who married grown men. She stated that, in the past, Tony Alamo had run the organization from prison; that he encouraged parents to give up their parental authority to him; that the parents adopted Alamo's views and were blind to the risks to their children; and that children were often [*5] separated from their parents, as she was at the age of twelve. She described being in a group of children present when Justin Miller was given 140 licks with a three-feet-long paddle at Alamo's direction; when it was over, blood seeped through his pants.[1] She said that Alamo had spanked her with a board and had beaten others mercilessly, and she named numerous people whom she had seen beaten. Ms. Cooper said that, before she left the ministry, her son confided to her that he was thinking about suicide.

S.B. described being beaten at Alamo's direction by one of his wives, Michelle Jones, when S.B. and her sisters M.B.1 and A.B. were living at Alamo's residence. She said that A.T.1 (Thorne's daughter) and L.K. (one of the Krantzes' daughters) were in the room during her beating. She also said that A.T.1 lived in Alamo's home, which L.K. visited. She stated that Alamo had slapped her four or five times and

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[1] See *Miller v. Tony & Susan Alamo Found.*, 748 F.Supp. 695 (W.D.Ark.1990).

that he had hit B.S. (Greg Seago's daughter), C.R. (Alphonso Reid's daughter, aged ten), and A.O. (the Ondriseks' daughter). She also said that some girls were forced to fast. S.B. said that she was threatened with a spanking by John Kolbeck if she told anyone what happened at Alamo's house. She testified that, in February or March 2008, she and the other girls at Alamo's house, including A.T.1 and M.M., were forced by Alamo to participate in recording Tape No. 564, in which they denied being molested by him.

In detail, M.B.1 described the ministry's secrecy and the members' isolation from the outside world; Alamo's teaching that the Bible permitted girls to marry at puberty; her sexual [*6] molestation in the shower by Alamo when she was living in his home; her beating by John Kolbeck; Kolbeck's beating of other children; Alamo's living arrangements with adult women and girls as young as age eight; his time spent alone in his bedroom with the young girls; her participation in Tape 564 with N.M.1 and M.M.; and being forced to help hold down S.B. (aged eleven or twelve) while Michelle Jones beat her. M.B.1 said that she heard B.S. scream while John Kolbeck beat her and that Bethany Myers was one of the people who dragged B.S. to the beating. According to M.B.1, Myers's daughters N.M.1 and M.M., while living in a separate residence with Myers, spent a significant amount of time in Alamo's household. M.B.1 also said that two men in their twenties had asked her to marry them and that she had friends her age who had already married and had children and who hated

their lives. She stated that most older boys leave the ministry; that it is not safe for children; and that Alamo would continue to control the ministry while he was in jail. She said that the parents believe that Alamo is a prophet and do not question his authority.

Nicholas Broderick described witnessing John Kolbeck's savage beating of Spencer Ondrisek, Phillip Avila, and A.O., while the Ondriseks were present and did nothing. He said that Kolbeck once slapped him, but did not beat him, because Nicholas stated that he was going to leave the ministry. He explained that it was normal for boys to drop out of school by the age of seventeen and that there were few boys in school above the tenth grade, after which he dropped out. He said that he was forced to fast a few times and experienced "diesel therapy" (being forced to ride with a driver of a ministry truck). He added that [*7] young girls were at risk of becoming child brides; that J.G. married a man in his thirties; and that R.S. married when she was fourteen.

H.D., aged seventeen, testified that she had left the ministry when she was twelve. She said that she was forced to fast for a week at the age of ten because she had failed to perform a chore after suffering a head injury in a fall. She stated that the fall caused her to lose consciousness, and when she came to, people were praying over her; no one, however, took her to a doctor. In fact, she did not think that ministry members were supposed to go to the hospital. She said that she had suffered memory loss and pain and swelling on the back of her head. She said that her

sister had also been placed on a fast. H.D. described being present when J.G. was informed that she was going to get married at the age of twelve. She said that she and J.G. were playing with Barbies when J.G.'s mother received a phone call in which she learned that the marriage would occur; J.G. and her mother were upset, and J.G. cried. She said that J.G. had a typical wedding with a bridal dress and bridesmaids.[2] H.D. stated that she was taught that it was permissible to lie to people outside the ministry.

Bethany Myers acknowledged violating the court's order by not producing her children for DHS. She said that she had no idea where her husband and children were. The trial court held her in contempt and placed her in jail.

Don Thorne denied having any first-hand knowledge that John Kolbeck or anyone else had beaten the children or that children had been forced to fast. He admitted giving [*8] Sophia away in marriage at the age of twelve. He claimed that the ministry no longer permitted young girls to marry but admitted that he had heard Alamo preach that the Bible condones polygamy and the marriage of girls at puberty. Thorne denied letting A.T.1 live at Alamo's residence but admitted that she had stayed there for a couple of weeks. He was untroubled by Alamo's using her to create Tape No. 564 without his

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[2] A wedding picture from J.G.'s wedding ceremony was introduced into evidence.

permission. He acknowledged that his wife had told him that she had asked John Kolbeck to spank A.T.2 while Thorne was driving a truck for the ministry.

G.P.1, aged seven, testified that his father had spanked him and two of his younger sisters with a paddle that had their names on it. He said that both of his parents had slapped him on the face when he was six, leaving red marks, and that he was afraid of being spanked by John Kolbeck.

Sophia Parrish admitted slapping and "popping" G.P.1 in the mouth on two occasions but denied leaving any marks. She admitted spanking him and G.P.2 with a paint stirrer or with her hand. After obviously lying under oath and being threatened with a perjury charge, Sophia returned to the stand and admitted that she had spanked G.P.1 with a paddle; that she had married at twelve when Carlos was nineteen; that her father had walked her down the aisle; that she had sex with Carlos when she was twelve; and that she had given birth to a stillborn baby girl at the age of fourteen. Sophia stated that the Krantzes were at her wedding, which was widely celebrated by the members of the ministry. She affirmed that John Kolbeck had spanked A.T.2 at his mother's request. Sophia said that she [*9] had completed only the sixth grade because she had not wanted to be pregnant while in school. She stated that her friends had also dropped out when they began having children, and she listed four other weddings of young girls that she had attended.

Carlos Parrish testified that he did not believe Nicholas and denied having witnessed any beatings. He stated that he had no intention of moving away from the ministry's property.

Bert Krantz, who was fifty-seven years old at the time of the hearing, testified that he joined the ministry, in which he is a minister, in 1972, and that he works in disseminating Alamo's recorded messages. He admitted that he was present at, and approved of, several weddings of young girls but said that the ministry had not permitted underage girls to marry in five or six years. He stated that, although the Bible condones the marriage of young girls at puberty, he would not permit his children to marry during their minority, nor would he let his children fast or be disciplined by anyone else. He stated that he had never witnessed any physical punishment. He acknowledged having heard Tape No. 564 but said that it had not concerned him. Bert said that he believed that Alamo is a prophet and that it would be a sin against God to leave the ministry. He denied letting Alamo run anything in his life, but he admitted that he does not drive because Alamo does not want him to do so.

Miriam Krantz, who is twenty years younger than her husband and is the custodian of the audiotapes, also said that no one else disciplined her children; that she was familiar with Tape No. 564; that she also believes that Alamo is a prophet; that she did not know [*10] that Kolbeck had administered discipline; and that, when she attended Sophia's wedding,

she was aware that Sophia was twelve, but it did not concern her.

In the adjudication order, the circuit court found the children dependent-neglected and made extensive findings of fact. The court found that the Thornes had failed to protect their children against physical abuse; that they were aware of the pattern and practice of severe physical beatings; that they endorsed and facilitated illegal marriages of underage females to adult males; that they neglected the needs of their children by failing to assure that they received adequate education and by failing to register their children in an accredited school with certified teachers or providing legally approved home schooling. The court also found that the parents committed or permitted medical and physical abuse by requiring, condoning, and permitting dangerous, involuntary fasts imposed on children younger than fifteen, and by failing to have them properly immunized. The court further found that the parents were aware of multiple instances when Tony Alamo, through his direction to John Kolbeck or others, intentionally caused physical harm to Spencer Ondrisek, Philip Avila, and A.O. The court found that the parents were aware of Alamo's pattern and practice of enforcing adherence to his will by brutal physical attacks. The court noted M.B.1's molestation by Alamo at the age of thirteen. It further found that the parents were aware that Alamo claimed to be married to multiple wives and that they permitted and condoned the ministry's practice of "diesel therapy." [*11]

The court set the goal of reunification and gave the parents supervised visitation. Along with other requirements, it directed them to obtain stable employment and safe and stable housing, separate and apart from the Tony Alamo Christian Ministries and its members, and to maintain them for at least six months. The court directed Thorne to assist DHS in locating the children currently in hiding with his spouse. The court expressly found the testimony of M.B., Jessica Cooper, S.B., H.D., and Nicholas Broderick that beatings, forced fasting, underage marriages, educational neglect, and sexual abuse occurred credible and stated that there was a pattern and practice of such abuse. It deemed not credible the testimony of Carlos Parrish, Sophia Parrish, Thorne, Bert Krantz, and Miriam Krantz that those abuses did not occur.

Thorne first challenges the evidence supporting the adjudication of his children as dependent-neglected and contends that there was no evidence that they were mistreated in any way. He points out that there was no evidence that they were not immunized; although this is correct, it does not require reversal, in view of the overwhelming evidence of other threats to their well-being, which are discussed below. Thorne also asserts that the evidence does not support the trial court's findings that he had educationally neglected his children, pointing out, correctly, that the Christian A Beka curriculum used by the ministry's school is widely accepted, and that the state does not require private schools to be accredited

or that their teachers be certified. Nevertheless, the evidence demonstrated that young girls frequently drop out of school long before completing high school and that the boys, who [*12] often are placed on diesel therapy, do not progress much further. In the ministry, getting a high school diploma is the exception, not the rule.

Thorne also asserts that the trial court did not judge his case separately from the others and thereby contravened Arkansas Code Annotated section 9-27-325(i)(1) (Repl.2009), which requires adjudication hearings to be closed. We disagree. First, the trial court did close the hearing. Second, although the trial court's adjudication orders used similar language, it was apparent that the court considered each case on its own. Third, that statute does not prevent the circuit court from hearing certain cases together when it is appropriate, and appellants have cited no authority to the contrary.

Adjudication hearings are held to determine whether the allegations in a petition are substantiated by the proof. Ark.Code Ann. § 9-27-327(a)(1) (Repl.2009). Dependency neglect allegations must be proven by a preponderance of the evidence. Ark.Code Ann. § 9-27-325(h)(2)(B) (Repl.2009). We will not reverse the circuit court's findings unless they are clearly erroneous. *Seago v. Ark. Dep't of Human Servs.*, 2009 Ark.App. 767, ___ S.W.3d ___. In reviewing a dependency-neglect adjudication, we defer to the circuit court's evaluation of the credibility of the witnesses. *Id.* The focus of an adjudication hearing is

on the child, not the parent; at this stage of a proceeding, the juvenile code is concerned with whether the child is dependent-neglected. *Id.* An adjudication of dependency-neglect occurs without reference to which parent committed the acts or omissions leading to the [*13] adjudication; the juvenile is simply dependent-neglected. *Id.; Albright v. Ark. Dep't of Human Servs.*, 97 Ark.App. 277, 248 S.W.3d 498 (2007).

Arkansas Code Annotated section 9-27-303(18)(A) (Repl.2009) defines a "dependent-neglected juvenile" as any juvenile who is at substantial risk of serious harm as a result of abandonment, abuse, sexual abuse, sexual exploitation, or neglect. The definition of "neglect" in section 9-27-303(36)(A) includes acts or omissions of "a parent, guardian, custodian, foster parent, or any person who is entrusted with the juvenile's care by a parent" that constitute:

> (i) Failure or refusal to prevent the abuse of the juvenile when the person knows or has reasonable cause to know the juvenile is or has been abused;
>
> (ii) Failure or refusal to provide the necessary food, clothing, shelter, and education required by law, . . . or medical treatment necessary for the juvenile's well-being . . . ;
>
> (iii) Failure to take reasonable action to protect the juvenile from abandonment, abuse, sexual abuse, sexual exploitation, neglect, or parental unfitness when the existence of this condition was known or should have been known;

> (iv) Failure or irremediable inability to provide for the essential and necessary physical, mental, or emotional needs of the juvenile, including failure to provide a shelter that does not pose a risk to the health or safety of the juvenile;
>
> (v) Failure to provide for the juvenile's care and maintenance, proper or necessary support, or medical, surgical, or other necessary care;
>
> (vi) Failure, although able, to assume responsibility for the care and custody of the juvenile or to participate in a plan to assume the responsibility; or
>
> (vii) Failure to appropriately supervise the juvenile that results in the juvenile's being left alone at an inappropriate age or in inappropriate circumstances, creating a dangerous situation or a situation that puts the juvenile at risk of harm. [*14]

We reject Thorne's argument that the circuit court erred in finding his children dependent-neglected because there was no evidence that they had personally suffered abuse. As we explained in our November 2009 *Seago, Broderick,* and *Reid* opinions, the General Assembly's expressed purpose in the juvenile code is to protect dependent-neglected children and make their health and safety its paramount concern; a child may be adjudicated dependent-neglected even if he or she has not yet suffered abuse. Thorne, who lived and worked in this community for over three decades, was rearing his children in a

secretive, communal environment that included sexual abuse of young girls, underage marriage, fasting, and beatings. Thorne admitted that his wife asked John Kolbeck to spank A.T.2 while he was absent and that he gave his twelve-year-old daughter in marriage to an adult man. A.T.1, who apparently lived in Alamo's home, witnessed S.B.'s beating by Michelle Jones. Bethany Myers was one of the people who dragged B.S. to be beaten by Kolbeck. Additionally, Sophia Parrish admitted "popping" G.P.1 on the mouth, as he had testified. Striking a child six years of age or younger on the face or head, with or without physical injury, is abuse. Ark. Code Ann. § 9-27-303(3)(A)(vii)(a). Thorne's assertion that the evidence of corporal punishment should not be credited because there was no medical evidence is disingenuous in view of the testimony showing that the ministry discourages its members from seeking medical assistance.

Thorne's second argument is that two provisions of the case plan violate his right to freely exercise his religion as protected by the United States and Arkansas Constitutions. The [*15] circuit court ordered Thorne to "obtain safe and stable housing separate and apart from the Tony Alamo Christian Ministries and its members, and maintain said housing for at least six months" and to "obtain stable employment separate and apart from the Tony Alamo Christian Ministries and its members and maintain

said employment for at least six months." Thorne contends that, in essence, the case plan makes him choose between his children and his church.

DHS and the attorney ad litem argue that Thorne failed to make this argument below and that the circuit court therefore never ruled on it. We disagree. Thorne's lawyer raised the constitutional issue at the beginning of the hearing: "Your Honor, this case is purely a free exercise of religion case." Thorne and other witnesses testified about the importance of communal living within the ministry. When asked whether living off ministry property would have an effect on his "Christian walk," Thorne responded "[a]bsolutely." The circuit court, in ruling from the bench on the dependency-neglect issues, recognized Thorne's beliefs. "[T]he parents involved have very strong feelings and very strong convictions concerning their spiritual beliefs and how they wish to live." And the court recognized the legal decision it faced.

> [W]e have the intertwining of the allegations of the state concerning abuse in various forms and various forms of neglect coupled with the religious and spiritual beliefs of the mothers and fathers and families that are participants in this case. That right, as given to us as citizens of the United States, that is freedom of religion to believe as we cho[o]se I consider to be one of our most important rights and one that I, as a judge, believe that

> I am charged to protect within the law as within the facts. [*16]

The circuit court's order, finally, required Thorne to make substantial changes in his religious practices to pursue reunification with his children. Taking this record as a whole, we conclude that Thorne preserved the constitutional argument.

Every person's right to make decisions of conscience about religious matters is protected by the Free Exercise Clause of the First Amendment to the United States Constitution and by an even more sweeping provision of the Arkansas Constitution. Article 2, section 24 of Arkansas's Constitution provides, in part, that "[a]ll men have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences. . . . No human authority can, in any case or manner whatsoever, control or interfere with the right of conscience. . . ." As another court stated the legal principle in another case involving this ministry, "[r]eligious and political beliefs, no matter how bizarre and nonconforming, are personal matters, and the courts are not instruments of orthodoxy charged with the responsibility of keeping citizens on the ideological straight and narrow." *Miller v. Tony and Susan Alamo Found.*, 748 F.Supp. 695, 698 (W.D. Ark. 1990) (Morris S. Arnold, J.); see also *West Virginia State Board of Educ. v. Barnette,* 319 U.S. 624, 642 (1943). To judge the constitutional issue fairly, therefore, we must acknowledge and consider the circuit court's unchallenged

finding about the sincerity of Thorne's religious beliefs. We do.

A parent's right of conscience in religious matters, however, sometimes collides with state laws of general application promulgated for the protection of children and other citizens. There are familiar examples. *Wisconsin v. Yoder,* 406 U.S. 205 (1972) (a state may [*17] not compel Amish children to attend high school until age 16); *Prince v. Massachusetts,* 321 U.S. 158 (1944) (a child-labor law was constitutional even though it kept a child from selling religious tracts as part of her faith); *Pierce v. Soc'y of the Sisters of the Holy Names of Jesus and Mary,* 268 U.S. 510 (1925) (a state may not require students to attend public schools; a parent has the authority to provide, and his or her child has the right to receive, sectarian schooling with secular schooling). These fact-specific cases strive for a delicate balance, one that respects all the important interests involved: parents' rights of conscience and of child-rearing and the state's interest as parens patriae in protecting children.

Arkansas law recognizes this delicate balance. "Parents, of course, have a fundamental right to direct the care and upbringing of their children. But the State of Arkansas has an equally compelling interest in the protection of its children." *Porter v. Ark. Dep't of Health & Human Servs.,* 374 Ark. 177, 185, 286 S.W.3d 686, 693 (2008) (internal citations omitted); see also Ark. Code Ann. § 9-27-102

(Repl.2009). And in child custody disputes, for example, a parent's religiously motivated choices and actions are material if they affect a child's well being. *Hicks v. Cook,* 103 Ark.App. 207, 212, 288 S.W.3d 244, 248 (2008). In some cases, the facts tip the balance in favor of protecting the child, and against the parent's liberty – even in matters of conscience and religious conviction. E.g., *Prince,* 321 U.S. at 167.

This is one of those cases. As the circuit court found, the most pressing potential danger facing Thorne's children was simply living on ministry property. The record is full [*18] of testimony about beatings, sexual abuse, underage marriages, and other problems, all of which victimized the children of families living on ministry property. In fashioning its case plan, the circuit court responded to the potential danger with a narrowly tailored solution – requiring Thorne to obtain housing separate and apart from the ministry. And because ministry life was communal in almost every respect, the court also required Thorne to obtain employment outside the ministry so he could earn the money to pay for this new housing arrangement and other living expenses. Here, as the circuit court implicitly concluded, the State's interest in preventing potential harm to these children outweighed Thorne's conscientious choice to live on ministry property, work for the ministry, and depend on the ministry for his family's every need. We see no constitutional infirmity in the circuit court's

disposition order on this record. We therefore affirm on Thorne's second point.

Affirmed.

GLADWIN, KINARD, GLOVER, BAKER, and BROWN, JJ., agree.

IN THE CIRCUIT COURT OF
MILLER COUNTY, ARKANSAS
JUVENILE DIVISION

ARKANSAS DEPARTMENT OF
HUMAN SERVICES PLAINTIFF

VS. NO. JV-2008-323-1

MIRIAM KRANTZ, MOTHER
ALBERT "BERT" KRANTZ, LEGAL OR
PUTATIVE FATHER OF
L.K., DOB: [Omitted in Printing]
A.K., DOB: [Omitted in Printing]
A.K., DOB: [Omitted in Printing]
S.K., DOB: [Omitted in Printing]
C.K., DOB: [Omitted in Printing]
R.K., DOB: [Omitted in Printing]

ET AL.
JUVENILE DEFENDANTS

ADJUDICATION ORDER

On this 20th day of January, 2009 the above entitled cause of action is presented to the Court for an adjudication of a petition filed by the Arkansas Department of Human Services alleging that the above named juveniles are dependent/neglected, Honorable Joe Griffin presiding. Present before the Court were Miriam Krantz, mother; Albert "Bert" Krantz, putative father; Jim Phillips, parents attorney; Cindy Allen, Miller County Children and Family Services; Malenda Cree, CASA; Misty Bowen-Eubanks, OCC Managing Attorney; Christy Carr,

Attorney Ad Litem; and Mary Helen Mitchell, Attorney for the Department of Human Services.

From the testimony, exhibits, statements of the parties and counsel, the record herein, and other things and matters presented, the Court, noting the best interests, welfare, health and safety, case plan and appropriate statutory placement alternatives, does hereby ORDER, ADJUDGE AND DECREE:

1. This Court possesses jurisdiction of the parties and the subject matter before it.

2. An Emergency order was entered on November 18, 2008 placing custody of the above named juveniles with the Arkansas Department of Human Services. A probable cause order was entered on November 24, 2008 wherein the Court found probable cause that the above named juveniles are dependent-neglected and that the emergency situation which necessitated removal of the juveniles continued such that it is necessary for the juveniles to remain in the custody of the Arkansas Department of Human Services until the adjudication hearing.

3. The Court finds that the Department exercised a 72 hour hold on November 18, 2008 by removing the juveniles from immediate danger of severe maltreatment.

__x__ The first contact of the Arkansas Department of Human Services arose during an emergency where immediate action was necessary to protect the health, safety and welfare of the juveniles and where

preventive services could not be provided, therefore the Arkansas Department of Human Services is deemed to have made reasonable efforts to prevent or eliminate the need for removing the juveniles from the juveniles' home

Based on the testimony and evidence produced at trial, the Court finds by a preponderance of the evidence that the above named juveniles are dependant-neglected as a matter of law and finds the Department of Human Services' petition to be true. a) Specifically, the Court finds that the parents in this matter failed to protect their children against physical abuse and that they were aware of the pattern and practice of severe physical beatings known within the closed community of the Tony Alamo Christian Ministries as "spankings or proverbs." b) Both parents endorsed and facilitated attempted illegal marriages of underage females to adult males. c) Both parents neglected the needs of the above juveniles and other children within their family by failing to reasonably assure that they received adequate educations; by failing to properly register their children for an accredited school with certified teachers; or, to properly register and provide home schooling under Arkansas law. d) The Court finds further that both medical and physical abuse was committed or permitted by the above referenced parents as to this child and other children within their family by requiring, condoning, and permitting dangerous, involuntary "fasts" imposed on children younger than fifteen years of age. Both parents further neglected their

children's medical needs by not having them properly immunized.

Additional Findings

The parents were aware of multiple instances where Tony Alamo, through his direction to John Kolbeck and others, intentionally caused physical harm to S.O., P.A., A.O., S.O, P. A., and A.O. were physically abused when S.O. was fourteen years of age. The beating was done by Tony Alamo and John Kolbeck and included strikes to the face with both open palm and closed fist. The paddle used to administer the beatings of these children was approximately three feet long, and one-half inch thick. These beatings were witnessed by other teenage children under the age of eighteen. One or both of their parents were required to observe the beatings.

A.O. was also beaten with a paddle when she was fourteen years of age during one of the three beatings which S.O. suffered at the hands of John Kolbeck at the direction of Tony Alamo. Richard and Debra Ondrisek witnessed the beating of A.O. and did nothing to prevent it. Beatings of juveniles in the Tony Alamo Christian Ministries took place frequently during the teenage years of S.O., A.O., and V.S.

There was a pattern and practice instituted by Tony Alamo, carried out by himself and his agents, for all members of the Tony Alamo Christian Ministries, whether residents of the Fouke, Arkansas community or living elsewhere, to enforce by brutal, physical

attacks adherence to his will. Miriam Krantz and Albert "Bert" Krantz were aware of this practice and condoned it

Miriam Krantz and Albert "Bert" Krantz were aware that Tony Alamo claimed to be married to multiple wives during years 2006, 2007 and 2008. The Court finds that there was a pattern and practice of allowing and consenting to informal, invalid, marriages between children under the age of sixteen to adult males over the age of twenty-one, and in many instances decades older than the age of twenty-one. The Court finds that these parents permitted and condoned a practice of the Tony Alamo Christian Ministries known as diesel therapy, where school age teenagers were removed from their residences and required to travel nation wide in the ministries business ventures helping diesel truck drivers' load and unload products, without access to schools or schooling.

M.B. was brutally beaten with a paddle approximately two and half to three feet long, and one and half to two inches thick. Punishment was also administered by way of depriving juveniles of food for twenty-four hours, forty-eight hours and longer. These children, as young as twelve years of age suffered risks of physical and medical harm. M.B. was a victim of illegal sexual contact perpetrated by Tony Alamo against her while under the age of eighteen. Tony Alamo made unwanted and improper contact with her breasts and her genitalia. Tony Alamo threatened her with undefined harm if she

told her parents or anyone else of the improper touching. M.B.'s recantation, as recorded in an interview with Tony Alamo in February of 2008, was not true and was given under threat of harm. M.B. was allowed by her parents to live in Tony Alamo's home when she was approaching her twelfth birthday. M.B. suffered sexual abuse at the age of thirteen. Members of the Tony Alamo Christian Ministries, including M.B. were taught that it was acceptable to lie to those who were not members of the Alamo communities.

5. This case was thoroughly reviewed by this Court on this date and the juveniles are in need of the services of the Arkansas Department of Human Services. Return to the custody of the parent is contrary to the welfare of the juveniles and continuation of custody in the Arkansas Department of Human Services is in the best interests of and necessary to the protection of the juveniles' health and safety.

6. The goal of this case shall be reunification and the case plan developed by the Arkansas Department of Human Services is approved. The concurrent plan for the juveniles shall be adoption.

7. Visitation of the parents with the juveniles shall be supervised by Department personnel who shall remain in the same room as the family during visitation. At no time shall the parents be alone with the children. There shall be no discussion of the facts of this case or any other pending juvenile or criminal matter related to the facts of this case during visitation. The duration, frequency, and parameters of the

visits between the juveniles and their parents shall be determined by the juveniles' counselor. If the counselor determines that it is in the best interest of the juveniles for visitation between them and their parents be stopped, the counselor will notify the Department Human Services Office of Chief Counsel immediately who will request an emergency hearing on the matter. There shall be no recording, either video or audio of the visits and no pictures made during the visits. All letters, notes, cards, literature and/or gifts shall be inspected and approved by the Department personnel prior to being given to the children.

8. Said juveniles are ordered to attend school daily unless medically excused, maintain passing grades, bring their grades and attendance records to the next hearing, and obey the lawful and reasonable commands of their foster care providers and school officials.

9. The parent(s) are ordered to: 1) submit to psychological evaluations by a psychological examiner licensed in the state of Arkansas and approved by the Department; 2) attend and actively participate in counseling as recommended by the psychological evaluation; 3) successfully complete parenting classes and demonstrate that they can effectively put what they have learned into practice; 4) obtain safe and stable housing separate and apart from the Tony Alamo Christian Ministries and its members and maintain said housing for a period of no less than six months; 5) obtain stable employment separate and

apart from the Tony Alamo Christian Ministries and its members and maintain said employment for a period of no less than six months; 6) allow the Department access to their home for home visits; 7) otherwise comply with the case plan and cooperate with the Department.

10. The Department of Human Services is ordered to 1) refer the parents for a psychological evaluation; 2) counseling; 3) parenting classes; 4) continue counseling for the juvenile; 5) monitor the parents' housing and employment.

11. If the Department is responsible for paying for services for the parent, the court orders

__x__ The parent is to pay for or reimburse the Department for failure to keep appointments for drug screens, psychological evaluations or other services funded by the Department

12. Pursuant to ACA §9-27-346 the Court finds that the parents have an obligation and have the ability to pay child support. A separate order of child support shall be entered and is incorporated by reference herein. The Office of Child Support Enforcement is permitted to intervene in this action or file a separate action to enforce this order of support, petition for modification to this order of support and to collect any arrearage that may accumulate. Upon request, the Office of Child Support Enforcement is permitted access to the entire court file/record as needed to carry out its obligations under this order and pursuant to law.

13. The court notes that the testimony of M.B., J.C., S. B., H.D., and N.B. was that beatings, forced fasting, under age marriages, education neglect and sexual abuse did occur at the Tony Alamo Christian Ministries, and that there was a pattern and practice of said abuse. The Court finds these witnesses to be credible. The Court finds that the testimony of Carlos Parrish, Sophia Parrisk [sic], Don Thorne, Albert "Bert" Krantz, and Miriam Krantz that the above named abuses did not occur is not credible.

14. The Court authorizes the Arkansas Department of Human Services or its agents when acting as custodian of the juveniles to enter consent to specific medical, dental or mental health treatment and procedures as required in the opinion of a duly authorized or licensed physician, dentist, surgeon, or psychologist, whether or not such care is rendered on an emergency basis or on an inpatient or outpatient basis, and the Court consents to such care.

15. The parents have provided a permanent mailing address which is [Omitted in Printing], Fouke, Arkansas and said designated mailing address will be used by the court and the Department for notice purposes unless and until the parents notify the court and the Department in writing of a new mailing address.

16. The parents have provided the court and the Department with the following information:

A. The mother does have membership in or descent from an Indian tribe; the legal/putative

father does not have membership in or descent from an Indian tribe; the juvenile do have membership in or descent from an Indian tribe;

17. As to educational issues, the Court orders the following:

A. ____The parents shall have access to school records on the juveniles.

__x__The parents shall NOT have access to school records on the juveniles.

B. ____The parent shall be able to obtain information about the juveniles' placement from the school records.

__x__The parent shall NOT be able to obtain information about the juveniles' placement from the school records.

C. ____The parent may participate in school conferences or similar activities at school.

__x__The parent may NOT participate in school conferences or similar activities at school.

D. The parent may make decisions under IDEA for the juveniles.

__x__The parent may NOT make decisions under IDEA for the juveniles;

And

The court __x__ will allow the foster parent to the parent under IDEA or

____ appoints _____ as the surrogate parent

18. Prior orders of this Court which do not conflict with this order shall remain in effect.

19. Jurisdiction of this cause is continued with a review hearing scheduled for March 12, 2009 at 9:00 a.m. at the Hazel Street Courthouse, Texarkana, Arkansas. Further, all parties present have received notice of hearing and no further notice of hearing shall be required.

IT IS SO ORDERED, Effective this 20th day of January 2009.

/s/ Joe E. Griffin
Joe Griffin, CIRCUIT JUDGE
JUVENILE DIVISION

DATE: Feb. 9, 2009

PREPARED BY:

/s/ Mary Helen Mitchell
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(CW11A/08-05)

ARKANSAS SUPREME COURT and
ARKANSAS COURT OF APPEALS
Justice Building
625 Marshall Street
Little Rock, Arkansas 72201

May 19, 2010

Clay S. Conrad
11767 Katy Freeway
Suite 740
Houston, TX 77079-1778

Re: CA09 00579
Albert Krantz
v.
Arkansas Department of Human Services

Dear Mr. Counsel:

The Arkansas Court of Appeals issued the following today in the above styled case:

"Petition for Rehearing is denied."

Sincerely

/s/ Leslie W. Steen
Leslie W. Steen, Clerk

LWS:llb

cc: Keith L. Chrestman
Tabitha Baertels McNulty
Orin Eddy Montgomery
Miller County Circuit Clerk
(No. JV2008-323-1)

MANDATE
AFFIRMED

Proceedings of April 14, 2010

CA09-579
ALBERT KRANTZ and
MIRIAM KRANTZ APPELLANTS

v.

ARKANSAS DEPARTMENT
OF HUMAN SERVICES APPELLEE

This appeal was submitted to the Arkansas Court of Appeals on the record on the Circuit Court of Miller County and briefs of the respective parties. After due consideration it is the decision of the Court that the judgment of the trial court is affirmed.

It is also ordered that the appellant pay the appellee $93.00 for brief costs in the appeal.

Marshall and Baker, JJ., agree.

In testimony, that the above is a true copy of the judgment of the Court of Appeals, I, Leslie Steen, Clerk, set my hand and affix the seal, this 24th day of June, 2010.

/s/ Leslie W. Steen
Clerk

ARKANSAS SUPREME COURT and
ARKANSAS COURT OF APPEALS
Justice Building
625 Marshall Street
Little Rock, Arkansas 72201

June 24, 2010

Deborah Ruth Sallings
Attorney at Law
101 E. Capitol, Suite 201
Little Rock, AR 72201

Re: 10 00444. Albert Krantz et ux v. Arkansas Department of Human Services

Dear Ms. Sallings:

The Arkansas Supreme Court made the following order today in the above styled case:

"Petition for review is denied. Corbin, J., not participating."

Sincerely

/s/ Leslie W. Steen
Leslie W. Steen, Clerk

LWS:llb

cc: Keith L. Chrestman
Tabitha Baertels McNulty
Clay C. Conrad
Mary Pankey, Clerk
(JV2008-323-1)

No. 10-552

SUPREME COURT, U.S.
FILED
NOV 2 6 2010
OFFICE OF THE CLERK

In The Supreme Court of the United States

ALBERT KRANTZ, *et ux.*,

Petitioners,

v.

ARKANSAS DEPARTMENT OF HUMAN SERVICES; MINOR CHILDREN,

Respondents.

On Petition For A Writ Of Certiorari To The Arkansas Court Of Appeals

BRIEF IN OPPOSITION

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COUNTER-QUESTIONS PRESENTED

1. In reviewing an appeal of an adjudication of children as "dependent-neglected" under the Arkansas Juvenile Code, Ark. Code Ann. § 9-27-301 *et seq.*, was the Arkansas Court of Appeals required to apply strict scrutiny to the parents-Petitioners' challenge to the state court's requirement under its remedial "case plan" that Petitioners find housing and employment separate from the Tony Alamo Christian Ministries compound?

2. Did the state courts' case-plan requirement of separate housing and employment violate the Petitioners' due process right to family integrity? (Petitioners' presentation of the question is incorrect. The issue presented to and decided by the Arkansas Court of Appeals was whether "two provisions of the case plan violate[d] [petitioners'] right to freely exercise [their religion]" (App. 18). Whether the initial *removal* of the children violated Petitioners' due process rights was neither raised nor decided by the Arkansas Court of Appeals).

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OPINIONS BELOW

The opinion of the Arkansas Court of Appeals, *Krantz v. Ark. Dep't of Human Servs.*, is reported at 2010 Ark. App. 316, 2010 WL 1487246 (Ark. App. April 14, 2010) (App. 1-2).[1] This opinion incorporates by reference the decision of *Thorne v. Ark. Dep't of Human Servs*, 2010 Ark. App. 317, 2010 WL 1486918 (Ark. App. April 14, 2010), which was modified on rehearing at 2010 Ark. App. 443, 2010 WL 1988182 (May 19, 2010). The Arkansas Court of Appeals denied petitioners' request for a rehearing on May 19, 2010 (App. 35) and the Arkansas Supreme Court denied petitioners' request for review on June 24, 2010 (App. 37).

STATUTES AND CONSTITUTIONAL PROVISIONS

This case involves the application of provisions of the Arkansas Juvenile Code, Ark. Code Ann. §§ 9-27-301 *et seq.* to the petitioners' children. Provisions applicable in this case include: Ark. Code Ann. § 9-27-303 (definitions of "abuse," "neglect," and "dependent-neglected juvenile"); Ark. Code Ann. 9-27-327 (dependency-neglect adjudication hearings); and Ark. Code Ann. § 9-27-334 (disposition of dependency-neglect cases).

[1] All references to the Appendix in this document are to the Appendix of the Petition for Writ of Certiorari.

Petitioners have invoked the Free Exercise Clause of the First Amendment to the U.S. Constitution, which provides that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof. . . ." and § 1 of the Fourteenth Amendment to the U.S. Constitution, which provides, *inter alia*, " . . . nor shall any state deprive any person of life, liberty, or property, without due process of law. . . ."

STATEMENT OF THE CASE

In September of 2008, the Arkansas Department of Human Services (DHS), in cooperation with the Federal Bureau of Investigation (FBI) and the Arkansas State Police, entered the Tony Alamo Christian Ministries (TACM) compound in Fouke, AR, after receiving numerous reports of sexual and physical abuse of children occurring at the facility. The petitioners' children were among those removed by DHS and placed into protective custody, either during this initial raid or shortly thereafter. The Circuit Court of Miller County, Arkansas subsequently found probable cause to maintain petitioners' children in state custody pending adjudication of dependency-neglect.

Due to the commonality of witnesses and evidence in the multiple dependency-neglect cases initiated by the Alamo removals, the Miller County Circuit Court consolidated the cases and held an

omnibus adjudication hearing (App. 4). The extensive evidence of severe abuse and neglect of children at the Alamo compound is amply recounted in the state court decisions at App. 1-34 in the Petition for Certiorari.

The evidence, among other things, revealed that the compound's leader, Bernie Lazar Hoffman (aka "Tony Alamo"), was and remains a dominating and controlling figure and was often the main perpetrator of abuse along with his accomplice John Kolbeck. Hoffman and Kolbeck, however, were not the only persons involved in either perpetuating or condoning the sexual and physical abuse of children.[2] The state court found that the petitioners, who had been members of the compound for their entire adult lives, failed to protect their children against physical abuse despite being aware of a "pattern and practice . . . carried out by [Tony Alamo] and his agents . . . to enforce by brutal, physical attacks adherence to [Tony Alamo's] will" (App. 27-28). The state court also found that petitioners were aware of the practice of invalid underage marriages occurring at the compound and of Tony Alamo's propensity for marrying multiple wives, and that petitioners permitted and condoned

---

[2] Hoffman was subsequently sentenced to a total of 175 years in a federal prison for transporting underage children across state lines for sexual purposes. Kolbeck evaded capture and is wanted by the FBI. *See* http://www.fbi.gov/wanted/additional/john-erwin-kolbek/view (last accessed November 9, 2010).

an abusive practice called "Diesel Therapy" wherein school-age teenagers who violated the rules of the compound were removed from their families and forced to travel nationwide in support of Alamo's multiple business ventures, without any access to schooling (App. 27-28).[3] The state court thus found, by a preponderance of the evidence (the correct standard in the non-permanent context of dependency-neglect adjudication), that the petitioners' children were dependent-neglected and needed state protection and the remedial measures afforded under the Arkansas Juvenile Code.

ARGUMENT

Petitioners Fail to State Grounds for Granting Writ of Certiorari

Supreme Court Rule 10(a)-(c) describes the three common bases for granting a writ of certiorari. Petitioners do not allege that their petition fits any of these criteria. Rather, they argue that the Arkansas Court of Appeals (1) erroneously applied a "balancing test," rather than strict scrutiny, to their Free Exercise and Due Process Clause challenges to the state

[3] Whether Alamo operated a "church" or business ventures solely for his benefit has been a matter of dispute before the Internal Revenue Service (IRS). *See, e.g., Music Square Church v. United States*, 218 F.3d 1367 (Fed. Cir. 2000) (describing IRS' refusal to recognize Alamo ventures as tax-exempt organizations).

courts' adjudications of their children as dependent neglected; and (2) erroneously reviewed the evidence under an inadequate level of scrutiny because the case was a hybrid of due process and free exercise rights. Certiorari should not be granted because "[a] petition for writ of certiorari is rarely granted when the asserted error consists of . . . the misapplication of a properly stated rule of law." *See* Supreme Court Rule 10. In any event, there is no need to grant certiorari because the Arkansas Court of Appeals properly applied the relevant Constitutional law, and no conflict in the Federal circuits exists as to the issues in this case.

Strict scrutiny does not apply because there is no law or state action targeting religious activity in this case.

There are two fatal flaws in the Petition for Certiorari. One is factual and one is legal. First, the state court did not order the petitioners to "disassociate from their religion" as petitioners erroneously state. Second, strict scrutiny does not apply to this case.

The Petition misstates the facts of the case when it claims that the state dependency-neglect court ordered the petitioners to "disassociate from their Church." Petition at 2, 8. Rather, after recounting the evidence of widespread abuse and neglect of children occurring at the compound and petitioners' awareness of such practices, the state trial court ordered, as

a condition of a dependency-neglect case plan for reunification, that the petitioners obtain safe living arrangements for their children and employment to support such arrangements (App. 30-31). There is no order curtailing petitioners' presence at the Alamo compound.

Safe housing and sufficient employment are legitimate and common conditions for reunification in Arkansas dependency-neglect actions concerning any parent, religious or secular, whose children have been removed from a potentially harmful environment. *See Carroll v. Ark. Dep't of Human Services*, 85 Ark. App. 255, 262, 148 S.W.3d 780, 784 (Ark. App. 2004) (parents' failure to secure safe and appropriate housing of their own is contrary to their children's well-being and best interest); *Dinkins v. Ark. Dep't of Human Services,* 344 Ark. 207, 214, 40 S.W.3d 286, 292 (Ark. S. Ct. 2001) (same).

The state court's requirement that the petitioners must find safe housing apart from the compound in order to be reunified with their children was amply supported by the evidence. As recounted by the Arkansas Court of Appeals, "[t]he evidence presented at the hearing overwhelmingly demonstrated that the environment at the [Alamo] compound in Fouke is potentially dangerous for the children of its members." *Seago v. Ark. Dep't of Human Servs.,* 2009 Ark. App. 767, ___ S.W.3d ___, 2010 WL 3852785 (Ark. App. Nov. 18, 2009); *see also Broderick v. Ark. Dep't of Human Servs.,* 2009 Ark. App. 771, ___ S.W.3d ___, 2009 WL 3853149 (Ark. App. Nov. 18, 2009) ("[t]he

evidence introduced at this hearing presented a clear picture of the danger to children in the ministry compound at Fouke").

State courts never limited the petitioners' ability to attend activities at the Alamo compound, including any activities the petitioners may view as religious. The state courts simply required that the petitioners obtain living arrangements (and employment to support such arrangements) away from the Alamo compound where harm to children is an ever-present risk. The state courts had no evidence that the potential harm would not continue to exist within the compound, especially given the petitioners' continuing refusal to acknowledge their responsibility for these acts or omissions, the longstanding nature of the practices, and the traditional control that Tony Alamo has exerted over his enterprises even from within prison. The state court also found that petitioners' testimony that these abuses did not occur "is not credible" (App. 32). These decisions were within the province of the state trial court to make after evaluating all of the evidence and assessing the credibility of the witnesses.

The issue of law in the state proceedings below was whether petitioners' children were dependent-neglected as a result of acts or omissions of the parents, under the Arkansas Juvenile Code. Dependency-neglect adjudication is not a permanent disposition of parental rights and the allegations must be proved by a preponderance of the evidence. Ark. Code Ann. § 9-27-325(h)(2)(B). The goal of these proceedings is to

obtain court supervision for abused or neglected children and to implement remedial plans for the parents to follow to be reunified with their children.

In this case, the Constitutional question properly raised to and considered by the Arkansas Court of Appeals did not concern the propriety of the initial removal of the children from the Alamo compound. Neither did it strictly concern the propriety of the adjudication of the children as dependent-neglected. Rather, the Arkansas Court of Appeals only reviewed whether the trial court's remedial case plan for the parents violated the petitioners' free exercise rights by requiring the petitioners to find safe housing and employment separate from the Alamo compound (App. 18).

The actions of the Respondents (as well as those of the state court that issued the orders that guided Respondents' actions) were undertaken under "valid and neutral law[s] of general applicability," and as such the actions of the state are not subject to strict scrutiny. *See Employment Div., Or. Dep't of Human Res. v. Smith*, 494 U.S. 872, 878-79, 110 S.Ct. 1595, 1600, 108 L.Ed.2d 876 (1990); *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 531-32, 113 S.Ct. 2217, 124 L.Ed.2d 472 (1993). Dependency-neglect statutes apply equally to all parents, religious or secular, and prohibit child sexual and physical abuses, which are not protected religious practices.

The Free Exercise Clause does not excuse petitioners from complying with neutral laws of general applicability. There is no constitutional right to raise children in a potentially harmful environment – regardless of the religious context of that environment. *Prince v. Massachusetts,* 321 U.S. 158, 166-167, 64 S.Ct. 438, 88 L.Ed. 645 (1944) (upholding child labor laws applied to custodian of a child who allowed minor to distribute religious literature, and stating that "the right to practice religion freely does not include liberty to expose [a] . . . child . . . to ill health or death").

The petitioners gravely overstate the majority opinion in *Church of the Lukumi Babalu Aye* (cited and quoted at App. 7, 10). *Lukumi Babalu Aye*, to the contrary, reiterated the holding of *Smith, supra,* that neutral laws of general applicability do not violate the Free Exercise Clause when applied to members of religious sects in the absence of any evidence that the law or state action was motivated by a desire to suppress religious practices. *Lukumi Babalu Aye's* ultimate application of strict scrutiny to the facts of that case resulted because the law at issue "fail[ed] to prohibit nonreligious conduct that endanger[ed] the [government's] interests in a similar or greater degree" as compared with the religiously motivated conduct that was prohibited. *Lukumi Babalu Aye,* 508 U.S. at 543, 113 S.Ct. 2217 (religious sacrifice of animals was prohibited, but other forms of animal slaughter were not).

Here, there are no laws or state actions "target[ing] religious conduct for distinctive treatment or advanc[ing] legitimate governmental interests only against conduct with a religious motivation." *Lukumi Babalu Aye*, 508 U.S. 520 at 546, 113 S.Ct. 2217 at 2233. The targeted conduct in this case – child abuse and neglect – is illegal for any parent, religious or secular, to practice, and the remedial measures implemented by the state court here, such as requiring safe housing, are identical to those implemented nationwide in dependency-neglect cases every year. There was no evidence of any intent neither to tamper with a belief system nor to single out these petitioners for more intensive dependency-neglect prosecution because of their religious beliefs. Petitioners, understandably, never went so far as to assert that the outlawed practices occurring at the compound – sexual and physical abuse of children – were religious tenets that enjoy free exercise protection.

Even if the dependency-neglect court's actions would indirectly burden some of petitioners' religious conduct or practices, such as their belief they needed to live at the compound or risk excommunication by Tony Alamo, "an individual's religious beliefs [do not] excuse him from compliance with an otherwise valid law prohibiting conduct that the State is free to regulate." *Smith,* 494 U.S. at 879. Petitioners' perception that their religious freedom was infringed is but incident to their stubborn refusal to accept the state courts' neutrally-motivated conclusion that their

current housing arrangements were not safe or suitable for children, and their refusal thus obtain safe living arrangements to remedy this circumstance.

Petitioners' pleas as to their good character as parents are not well-taken (App. 10). "Neglect" is defined in the Arkansas Code, among other things, as acts or *omissions* of a parent that constitute a "failure to take reasonable action to protect the juvenile from abandonment, abuse, sexual abuse, sexual exploitation, neglect, or parental unfitness when the existence of this condition was known or should have been known." Ark. Code Ann. § 9-27-303(18)(A).

Arkansas courts have long recognized that a parents' refusal to accept responsibility for subjecting a child to potential harm is a valid ground for adjudging a child dependent-neglected and providing that child with the protection of the dependency-neglect court, and even a valid ground for eventual termination of parental rights. *See, e.g., Jones-Lee v. Ark. Dep't of Human Servs.*, 2009 Ark. App. 160, 316 S.W.3d 261 (Ark. App. 2009). These principles apply to all parents and have never been selectively applied to the petitioners on the basis of their religious beliefs. There is no evidence in the record suggesting that Respondents were motivated to seek the protection of the dependency-neglect courts for petitioners' children because its administrators "disapprove[d] of a particular religion or of religion in general." *Lukumi Babalu Aye*, 508 U.S. at 532, 113 S.Ct. 2217.

This case is not a hybrid of family-integrity due process and free exercise rights.

Petitioners argue that the Arkansas Court of Appeals ignored their due process right to family integrity when reviewing the sufficiency of the evidence for removing the children and specifying its dependency-neglect remedies. Petition at Section II. To the extent this argument seeks review of the initial removal, however, it is not the question presented to and decided by the Arkansas Court of Appeals (*see* App. 18). Nevertheless, the argument reflects petitioners' fundamental misunderstanding of this Court's "hybrid rights" precedents.

The Due Process Clause of the Fourteenth Amendment protects the fundamental right of parents to make decisions as to the care, custody and control of their children. *See, e.g., Troxel v. Granville*, 530 U.S. 57, 65-66, 120 S.Ct. 2054, 147 L.Ed.2d 49 (2000). However, "a state is not without constitutional control over parental discretion in dealing with children when their physical or mental health is jeopardized." *Parham v. J.R.*, 442 U.S. 584, 603, 99 S.Ct. 2493, 61 L.Ed.2d 101 (1979). The state's compelling interest in protecting a child's safety exists even when religious and parental rights are asserted. *Prince*, 321 U.S. 158, 166-167, 64 S.Ct. 438, 88 L.Ed. 645 (1944) (the "right to practice religion freely does not include liberty to expose [a] . . . child . . . to ill health or death.").

The substantive due process right to control the parents' upbringing of a child only fuses with free exercise rights and compels strict scrutiny review of the evidence when a *bona fide* parental-integrity interest exists. *Smith* discussed the possibility of strict scrutiny where a free exercise claim was joined to a claim regarding the right of parents to control the *education* of their children. *Smith*, 494 U.S. at 881, 110 S.Ct. at 1601 ("[t]he only decisions in which we have held that the First Amendment bars application of a neutral, generally applicable law to religiously-motivated action have involved not the Free Exercise Clause alone, but the Free Exercise Clause in conjunction with other constitutional protections, such as . . . the right of parents, acknowledged in *Pierce v. Society of Sisters*, 268 U.S. 510, 45 S.Ct. 571, 69 L.Ed. 1070 (1925), to direct the education of their children"); *see also Wisconsin v. Yoder*, 406 U.S. 205, 92 S.Ct. 1526, 32 L.Ed.2d 15 (1972) (invalidating compulsory school-attendance laws as applied to Amish parents who refused on religious grounds to send their children to school).

Unlike educational prerogatives, however, there is no *bona fide* parental right to raise a child in an environment proven to be harmful. This Court has never found that parental or free exercise rights categorically trump the state's compelling interest in protecting children in matters of health or safety.

Thus, the petitioners' claim that the state courts should have reviewed this case under a more exacting lens must fail. The Arkansas Court of Appeals was

correct when it stated in the incorporated opinion under review: "a parent's right of conscience in religious matters, however, sometimes collides with state laws of general application promulgated for the protection of children and other citizens." *Thorne*, 2010 Ark. App. 317, 2010 WL 1486918 (App. 21). As also stated by the Court of Appeals, "Arkansas law recognizes this delicate balance. 'Parents, of course, have a fundamental right to direct the care and upbringing of their children. But the State of Arkansas has an equally compelling interest in the protection of its children.'" *Id. quoting Porter v. Ark. Dep't of Health and Human Servs.*, 374 Ark. 177, 185, 286 S.W.3d 686, 693 (2008). There was no Constitutional infirmity in these rulings.

CONCLUSION

In summary, the Arkansas Court of Appeals was not required to apply strict scrutiny in reviewing the trial court's application of valid and neutral state dependency-neglect laws and policies to the petitioners. Petitioner's argument that their due process right to family integrity was violated is also without merit. This Court should dismiss the Petition for Certiorari.

Respectfully submitted,

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